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Due Date: May 23, 2004

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

In re Application of:	
Inventor: Alexander Thoemmes et al.	Examiner: Yang, Ryan R.
Serial #: 09/256,896	Group Art Unit: 2672
Filed: February 24, 1999	Appeal No.: ______
Title: ACQUIRING AND UNACQUIRING ALIGNMENT AND EXTENSION POINTS	

SUPPLEMENTAL REPLY BRIEF OF APPELLANTS

Board of Patent Appeals and Interferences
U.S. Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

In accordance with 37 C.F.R. § 1.193, Appellants hereby submit their Supplemental Reply Brief in response to the Examiner's Supplemental Answer mailed on March 23, 2004. The Supplemental Reply Brief is submitted in triplicate.

I. ARGUMENTS

A. The Response to the Reply Brief is Improper

Appellants submitted an Appeal Brief on June 17, 2003. In response, an Examiner's Answer was mailed to Appellants on October 21, 2003. Under 37 C.F.R. §1.193(b), Appellants submitted a Reply Brief on December 22, 2003.

37 C.F.R. §1.193(b)(1) provides: "The primary examiner must either acknowledge receipt and entry of the reply brief or withdraw the final rejection and reopen prosecution to respond to the

reply brief. A supplemental examiner's answer is not permitted unless the application has been remanded by the Board of Patent Appeals and Interferences for such purpose."

Contrary to the above rule, the Patent Office entered the reply brief AND submitted a supplemental response to the arguments. Appellants submit that such a response is not permitted. Accordingly, the response to the arguments should not be considered.

Nonetheless, despite the improper supplemental response, Appellants address the supplemental response herein.

B. Claims 36 and 38 Are Patentable Over the Cited References

In response to the Reply Brief, the Examiner's Supplemental Answer provides:

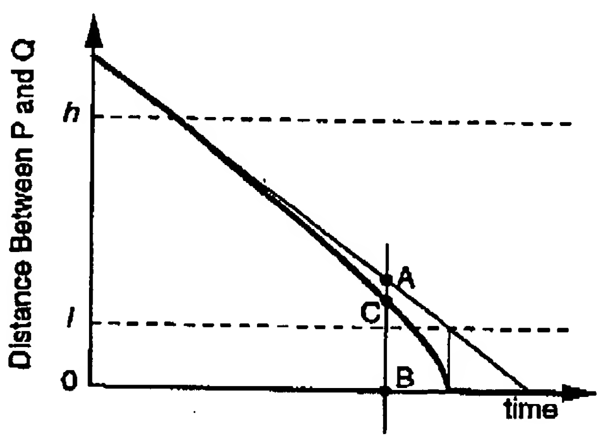
> In reply, Examiner consider the statement "the user drags a vertex of a display towards the vertex of another object displayed in a scene" (column 12, line 6-8) as a movement of a cursor, the dragged vertex is in the cursor position (column 12, line 14), since the distance of "near" cannot be quantified, examiner consider movement around the distance of magnetic attraction is pretty near.
>
> As for alleged only one vertex is under the control of the cursor, examiner consider a polygon has a plurality of vertices. If one vertex is dragged, the other vertices have to be dragged along, or the polygon will be deformed. Therefore, when one vertex of a polygon is acquired, a plurality of vertices, as well as the polygon is considered acquired.
>
> Appellant alleges that Venolia fails to disclose acquisition of the data point after a cursor moves near the data point. In reply, examiner consider the magnetic attraction process qualify as a acquiring process when the cursor moves near the data point (see column 12, line 6-30).
>
> Appellant also alleges Venolia doe not disclose acquisition of a data point only with a modifier command. Examiner consider the teaching "keyboard commands or menu selections for creating and breaking such multiple object alignment" satisfy the limitation.

Appellants respectfully traverse the above assertions. As previously stated, the claimed data point is only acquired after a command is received to move a cursor near the data point. In Venolia, a vertex is simply dragged. Again, there is no description of how Venolia's vertex is acquired. To comply with the claims, the vertex must have been acquired only after a cursor is moved near a data point. The Supplemental Answer provides that since the distance of "near" cannot be quantified, the examiner considers movement around the distance of magnetic attraction is pretty near. However, such a statement still fails to indicate how or when the vertex is acquired. Appellants question how moving around a distance of magnetic attraction is equivalent to acquiring a point after moving a cursor near a data point. In this regard, the portion of Venolia that is quoted in the Office Action merely indicates that a vertex is dragged. As previously stated, there is no indication, implicit or explicit, in Venolia that indicates that the vertex that is being dragged is acquired AFTER

a cursor is moved near the vertex. Instead, no description of how the vertex is acquired is mentioned in Venolia at all.

The Supplemental Answer continues and states that polygons have multiple vertices and that by dragging one vertex, all of the vertices are dragged. Appellants agree with such a statement. However, such a statement has no relevance with respect to the claims. When describing the various vertices in the Reply Brief, Appellants were attempting to apply the principles set forth in Venolia. In this regard, Venolia describes dragging a single vertex P (see col. 12, lines 12-14). Thus, for Venolia to teach all of the limitations of the present claims, Venolia must describe how such a vertex is acquired. Appellants continue to note, that regardless of whether all of the points on a polygon are acquired or not, Venolia still fails to teach when or how such points are acquired. The claims specifically provide that that data point is acquired after a cursor is moved near the data point. No such teaching is present anywhere in Venolia.

The Supplemental Answer further continues and provides that the examiner considers the magnetic attraction process as qualifying as the acquiring process when the cursor moves near the data point (col. 12, line 6-30). The description in col. 12, lines 6-30 provides for dragging one vertex P towards another vertex Q. Vertex Q has an area that it influences. The description refers to FIG. 3:



The cursor is located at point A. The bottom line of the graph indicates the location of another vertex that the vertex at point A is being dragged towards or away from. When the cursor is on top of the second vertex, the point being dragged by the cursor is aligned at point B (i.e., the

distance between the two vertices is 0). However, as the distance between the two vertices increases, the vertex is actually displaced from the cursor position A and is influenced by the region of influence of the second point. This region of influence causes the vertex being dragged by cursor A to be located at point C.

With the above description in mind, one can attempt to apply the teaching to the present invention. The claims provide for acquiring a data point on a drawing object after moving a cursor near the data point. The second vertex in FIG. 3 (i.e., the vertex having the region of influence) is never acquired. As described in Venolia and set forth in FIG. 3, the second vertex merely influecnes a vertex (that is being dragged by cursor A) to change its location. Thus, the only possible point that can be acquired in the above description is that of the vertex that is being dragged (i.e., point C or cursor position A). However, as stated above, Venolia fails to describe when or how that vertex is acquired. Instead, Venolia merely describes dragging a vertex C using a cursor at position A. Nowhere is there any description of when or how the cursor acquires vertex C. As stated in the prior Reply Brief, many methods may be used in order to have the vertex follow a cursor. For example, a properties window, keyboard commands, or other methods may be used.

The Supplemental Answer further continues and states that the limitation that the acquisition only occurs with a modifier command is taught by Venolia's teaching "keyboard commands or menu selections for creating and breaking such multiple object alignments". Again, as previously stated, Appellants agree that when aligning an object in Venolia, a keyboard or menu command may be used to make or break an alignment (see col. 22, lines 9-11). However, the use of a keyboard command when two objects are close to each other so that the objects are aligned (or to break up such an alignment) is not even remotely similar to acquiring a data point. If we assume the Answer's suggestion is true, then prior to the alignment process, a data point is acquired. Accordingly, the first step would be to acquire a data point followed by the actual alignment process. During the alignment process, in accordance with Venolia, when the objects are moved together, a keyboard command may be used to align the already selected/acquired objects. There is no suggestion, that the object itself (or a point of the object) is only <u>acquired</u> after a modifier command has been selected. Instead, Venolia merely teaches using a keyboard command in the actual alignment process of the objects (i.e., after objects have been selected and are moved towards each

other with the desire to align the objects) and NOT as part of the object or vertex selection/acquisition process. Further, breaking up an object alignment has nothing at all to do with not acquiring a data point without a modifier command.

The claims provide with particularity how and when a data point is acquired. In this regard, the claims provide that the data point is only acquired (a) after a cursor is moved near by and (b) only when a modifier command is present. Such a teaching is completely lacking from Venolia as set forth in the Appeal Brief, Reply Brief, and this Supplemental Reply Brief.

Thus Appellants assert that Venolia fails to teach various claimed elements including the (1) acquisition of a data point of interest; (2) acquisition of the data point after a cursor moves near the data point; and (3) acquisition of a data point only with a modifier command.

C. Independent Claims 1, 13, 24, and 35 Are Patentable Over the Cited References

The Supplemental Answer indicates that Appellant alleges that the acquisition pause time is not based on processor speed but that such a limitation is not part of the claim.

In this regard, Appellants submit that the claims recite and use the language "acquisition pause time". Firstly, the Examiner is attempting to read into the term "acquistion pause time", language that is completely inconsistent with the dependent claims and the term as it is set forth in the specification. As an example, dependent claim 2 specifies that the pause time is user-selectable. The only way the processor speed is user selectable is if the user selects to buy a processor of a certain speed. Such an assertion is well beyond the scope of the present invention and not even remotely suggested by the present specification. Further, page 13, lines 9-22 of the present specification clearly describe the acquisition pause time of the invention:

> FIG. 2F is a flow chart illustrating the operations performed to determine if the cursor 304 has moved to and remained near the data point 303 for an acquisition pause time. First, block 250 determines if the cursor 304 is within the acquisition distance of a point of interest. If so, an acquisition timer is started, as shown in block 252. The acquisition timer is incremented and a check is made to determine if the cursor is still within the acquisition distance of the point of interest. This is depicted in blocks 254 and 256. If the cursor is not within the acquisition distance of the point of interest (it has moved), logic returns to block 250. If the cursor remains within the acquisition distance of the point of interest, a check is made to determine if the incremented acquisition timer has reached the acquisition pause time, as shown in block 258. If the acquisition timer has not reached the acquisition pause time, logic returns to block 254. If the acquisition timer has reached the acquisition pause time, the cursor 304 has entered and remained within the acquisition distance of the data point of interest, and the logic is completed.

As set forth herein the acquisition pause time may be determined with respect to a timer. In this regard, a specific amount of time that may be set by a user is not similar or described by a processor time for processing an action.

Further, the claims provide that the cursor remains near a data point for an acquisition pause time. And only after the acquisition pause time has passed is the data point acquired. No such dependency on leaving a cursor near a data point for a set period of time is set forth in either Venolia or Kimble.

Further, the term acquisition pause time inherently teaches away from a processor time as asserted by the Examiner. In this regard, the adjective "pause" is placed before the word "time". Nowhere in Kimble or Venolia is there any indication that processor time is equivalent to a pause time. Nor does Kimble or Venolia dsescribe a processor that can be paused. Further, the adjective "acquisition" is also used in the present claims. In this regard, the "time" is specifically modified and refers to an "acquisition time" – a time for acquiring. A processor time is not equivalent not similar to a time for acquiring. The mere use of these sequence of words in the claims clearly sets forth significant differences from a processor time as asserted by the Examiner.

Additionally, the Examiner cannot merely ignore these words when evaluating the claims. Under MPEP §2142 and 2143.03 "To establish *prima facie* obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art. *In re Royka*, 490 F.2d 981, 180 USPQ 580 (CCPA 1974). "All words in a claim must be considered in judging the patentability of that claim against the prior art." *In re Wilson*, 424 F.2d 1382, 1385, 165 USPQ 494, 496 (CCPA 1970)." In this regard, the Examiner cannot ignore the words "acquisition" or "pause" when evaluating the claims. However, it appears that the Examiner has merely disregarded these words and any meaning contained by these words in all of the asserted rejections.

D. Dependent Claims 7, 19, and 30 Are Patentable Over the Cited References

As set forth in Appellants Answer, these dependent claims specifically provide that an acquisition distance (the distance away from a data point) may be determined based on a group of parameters. The group contains a magnification of a view of the object and an object type. Neither of such parameters are described in Kimble whatsoever. In this regard, a dimension that

surrounds an object/icon is not remotely similar to an object type nor a magnification of a view of the object.

In response to prior arguments, the Supplemental Answer provides that the Examiner considers is obvious that acquisition distance is magnified along with a magnification of an object. Appellants respectfully traverse such an assertion. There is no support in either Kimble or Venolia for such an obviousness assertion. Kimble merely describes "domains" that are areas "established about each icon, wherein each icon domain is larger than the icon itself" (see Kimble's abstract and col. 2, lines 21-23). Kimble further provides that the size and dimensions of the domain (and NOT the icon) may be altered. Thus, the size and dimension of Kimble's objects cannot be changed. The claims provide that the acquisition distance is based on two parameters – a magnification of an object and an object type. Appellants submit that no such teaching is even remotely present in Kimble or the other cited references. Nor is such a teaching suggested, or obvious in view of Kimble or Venolia.

E. <u>Dependent Claims 8, 20, and 31 Are Patentable Over the Cited References</u>

As stated in the Reply Brief, these claims provide the step of annotating an acquired data point with an acquisition indicator. To teach these claims, the Supplemental Answer provides that when a cursor object is snapped to the center of an icon, the icon is annotated. Appellants respectfully traverse such an assertion. Merely snapping a cursor is an icon does not cause the icon to change, nor does it reflect any marking on the icon. As stated in the Reply Brief, Webster's dictionary provides the following definition for the term "annotation":

> **annotation**
>
> \An`no*ta"tion\, n. [L. annotatio: cf. F. annotation.] A note, added by way of comment, or explanation; -- usually in the plural; as, annotations on ancient authors, or on a word or a passage.
>
> <u>Source</u>: *Webster's Revised Unabridged Dictionary, © 1996, 1998 MICRA, Inc.*

Appellants submit that without modifying, commenting, explaining, or changing Kimble's icon, the icon cannot and is not annotated. Kimble merely provides for snapping a cursor object to

the center of the icon (see col. 7, lines 37-40), and completely fails to indicate any annotation, marking, change, modification, highlighting, etc. of the icon whatsoever. Without teaching such an annotation, Kimble fails to teach the invention as claimed.

F. Dependent Claims 9, 10, 21, 22, 32, and 33 Are Patentable Over the Cited References

Claims 9, 21, and 32 provide for unacquiring a data point after the cursor remains near an acquired data point for an unacquisition pause time. Claims 10, 22, and 33 provide for a series of steps for unacquiring a data point. Namely, a cursor is moved away from the data point, then near the data point again, followed by an unaquisition if the cursor remains near the data point for an unacquisition pause time.

In response to prior arguments, the Supplemental Answer provides that the Examiner considers demagnetizing as an un-acquiring process. However, as stated previously, the demagnetization of Kimble fails to teach the multiple steps required by the claim limitations that set forth the unacquiring process.

Again, as described in the Appeal Brief and the Reply Brief, the demagnetization is merely how long an object will remain demagnetized and does not provide for moving a cursor into an area and timing how long the cursor remains there in order to determine if a data point should be unacquired. After a point has been acquired, the user moves the cursor away, then moves it back, then waits near the cursor to unacquire the point. Kimble merely provides that the cursor can snap to a different neighboring pixel if the cursor is not moved for a specified time interval. Such a teaching does not teach the specific series of unacquiring steps recited in claims 10, 22, and 33. Further, the Examiner's Answer and Supplemental Answer fail to dispute this lack of teaching in the cited references.

G. Dependent Claim 11 Is Patentable Over the Cited References

To teach that an acquisition pause time is different from the unacquisition pause time, the Supplemental Answer now submits that the examiner considers it inherent to distinguish acquiring time from un-acquiring time so that the two times won't be confused.

Appellants note that in the Supplemental Answer, the Examiner equates the acquisition pause time with processor time. Accordingly, the time it takes for a processor to perform certain actions is not under the control of the user. Further, neither Kimble nor Venolia have the capability to determine (nor do they describe) a processor that takes different time to perform an acquisition pause time or an unacquisition pause time. In fact, based on the Examiner's interpretation, Appellants assert that such processor times would be the same. Such a result is contrary to that claimed.

Further, to establish inherency, the extrinsic evidence "must make clear that the missing descriptive matter is necessarily present in the thing described in the reference, and that it would be so recognized by persons of ordinary skill." *Continental Can Co.*, 948 F.2d at 1268. Appellants have consistently challenged the Examiner's assertion of inherency and obviousness and the lack of such a teaching in the cited references. In response, both the Examiner's Answer and Supplemental Answer fail to provide or even allege that the difference in the two times is present in either Kimble or Venolia and that such times would be recognized by persons of ordinary skill. Accordingly, the Examiner has failed to meet his burden with respect to establishing inherency.

Instead, it appears that the Examiner is asserting that the different terms "acquisition pause time" and "unacquisition pause time" are solely terms used in the claims so that the reader is not confused. However, claim 11 provides that the unacquisition pause time is a different value than the acquisition pause time. Thus, the claim language is used not just for the reader of the claims, but actually specifies and provides a functional limitation/difference. In this regard, Appellants do not understand who or what the confusion would be between the two times. Additionally, Appellants do not understand why there would be any confusion if the times were the same. Accordingly, the Examiner's argument does not make any sense.

II. CONCLUSION

In light of the above arguments, Appellants respectfully submit that the cited references do not anticipate nor render obvious the claimed invention. More specifically, Appellants' claims recite novel physical features which patentably distinguish over any and all references under 35 U.S.C. §§ 102 and 103. As a result, a decision by the Board of Patent Appeals and Interferences reversing the Examiner and directing allowance of the pending claims in the subject application is respectfully solicited.

Respectfully submitted,

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APPENDIX

1. A method of acquiring a data point of interest on a drawing object, comprising the steps of:

accepting a command to move a cursor near the data point of interest on the drawing object in a computer-implemented drawing program; and

acquiring the data point after the cursor remains near the data point for an acquisition pause time.

2. The method of claim 1, wherein the pause time is user-selectable.

3. The method of claim 1, wherein the object is a linear entity.

4. The method of claim 3, further comprising the step of accepting a command to move the cursor away from the data point to extend the linear entity.

5. The method of claim 1, wherein the data point is selected from a group comprising:

an endpoint;

a midpoint;

a node;

a closest quadrant point;

an insertion point;

a point on a line tangent to the object; and

a point on a line that forms a normal from the object.

6. The method of claim 1, wherein the step of acquiring the data point after the cursor remains near the data point for an acquisition pause time comprises the step of acquiring the data point after the cursor remains within an acquisition distance of the data point for an acquisition pause time.

7. The method of claim 6, wherein the acquisition distance is determined according to a parameter selected from a group comprising

magnification of a view of the object; and

an object type.

8. The method of claim 1, further comprising the step of annotating the acquired data point with an acquisition indicator.

9. The method of claim 1, further comprising the step of unacquiring the data point after the cursor remains near the acquired data point for an unacquisition pause time.

10. The method of claim 1, further comprising the steps of:

accepting a command to move the cursor away from near the data point;

accepting a command to move the cursor near the data point; and

unacquiring the data point after the cursor remains near the data point for the unacquisition pause time.

11. The method of claim 10, wherein the unacquisition pause time is a different value than the acquisition pause time.

12. The method of claim 1, further comprising the steps of:

accepting a command to move the cursor near a second data point on a second object;

acquiring the second data point after the cursor remains near the second data point for the acquisition pause time; and

aligning the first object and the second object according to the acquired first data point and the acquired second data point.

13. An apparatus for acquiring a data point of interest on a drawing object, comprising:

means for accepting a command to move a cursor near the data point of the drawing object in a computer-implemented drawing program; and

means for acquiring the data point after the cursor remains near the data point for an acquisition pause time.

14. The apparatus of claim 13, wherein the pause time is user-selectable.

15. The apparatus of claim 13, wherein the object is a linear entity.

16. The apparatus of claim 15, further comprising means for accepting a command to move the cursor away from the data point to extend the linear entity.

17. The apparatus of claim 13, wherein the data point is selected from the group comprising:

an endpoint;
a midpoint;
a node;
a closest quadrant point;
an insertion point;
a point on a line tangent to the object; and
a point on a line that forms a normal from the object.

18. The apparatus of claim 13, wherein the means for acquiring the data point after the cursor remains near the data point for an acquisition pause time comprises the step of acquiring the data point after the cursor remains within an acquisition distance of the data point for an acquisition pause time.

19. The apparatus of claim 18, wherein the acquisition distance is determined according to a parameter selected from a group comprising:

magnification of a view of the object; and
an object type.

20. The apparatus of claim 13, further comprising means for annotating the acquired data point with an acquisition indicator.

21. The apparatus of claim 13, further comprising means for unacquiring the data point after the cursor remains near the acquired data point for an unacquisition pause time.

22. The apparatus of claim 13, further comprising:

means for accepting a command to move the cursor away from near the data point;

means for accepting a command to move the cursor near the data point; and

means for unacquiring the data point after the cursor remains near the data point for the unacquisition pause time.

23. The apparatus of claim 13, further comprising:

means for accepting a command to move the cursor near a second data point on a second object;

means for acquiring the second data point after the cursor remains near the second data point for the acquisition pause time; and

means for aligning the first object and the second object according to the acquired first data point and the acquired second data point.

24. A program storage device, readable by a computer, tangibly embodying at least one program of instructions executable by the computer in a drawing program to perform method steps of acquiring a data point of interest on a drawing object, the method comprising the steps of:

accepting a command to move a cursor near the data point of interest on the drawing object; and

acquiring the data point after the cursor remains near the data point for an acquisition pause time.

25. The program storage device of claim 24, wherein the pause time is user-selectable.

26. The program storage device of claim 24, wherein the object is a linear entity.

27. The program storage device of claim 26, wherein the method steps further comprise the step of accepting a command to move the cursor away from the data point to extend the linear entity.

28. The program storage device of claim 24, wherein the data point is selected from the group comprising:

an endpoint;

a midpoint;

a node;

a closest quadrant point;

an insertion point;

a point on a line tangent to the object; and

a point on a line that forms a normal from the object.

29. The program storage device of claim 24, wherein the method step of acquiring the data point after the cursor remains near the data point for an acquisition pause time comprises the step of acquiring the data point after the cursor remains within an acquisition distance of the data point for an acquisition pause time.

30. The program storage device of claim 29, wherein the acquisition distance is determined according to a parameter selected from a group comprising:

magnification of a view of the object; and

an object type.

31. The program storage device of claim 24, wherein the method steps further comprise the method step of annotating the acquired data point with an acquisition indicator.

32. The program storage device of claim 24, wherein the method steps further comprise the step of unacquiring the data point after the cursor remains near the acquired data point for an unacquisition pause time.

33. The program storage device of claim 24, wherein the method steps further comprise the steps of:

accepting a command to move the cursor away from near the data point;

accepting a command to move the cursor near the data point; and

unacquiring the data point after the cursor remains near the data point for the unacquisition pause time.

34. The program storage device of claim 24, wherein the method steps further comprise the steps of:

accepting a command to move the cursor near a second data point on a second object;

acquiring the second data point after the cursor remains near the second data point for the acquisition pause time; and

aligning the first object and the second object according to the acquired first data point and the acquired second data point.

35. A method of unacquiring an acquired data point, comprising the steps of:

accepting a command to move a cursor near the acquired data point of a drawing object in a computer-implemented drawing program; and

unacquiring the data point after the cursor remains near the acquired data point for an unacquisition pause time.

36. A method of acquiring a data point of interest on a drawing object, comprising the steps of:

accepting a modifier command; and

acquiring the data point of interest on a drawing object in a computer-implemented drawing program after a command is received to move a cursor near the data point, wherein the data point is not acquired without the modifier command.

37. The method of claim 36, wherein the data point is acquired after the cursor remains near the data point for an acquisition pause time.

38. The method of claim 36 wherein the modifier command comprises the depression of a keyboard key.